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Re: 3dC
116829 ORIGINAL
(Red)

October 9, 1992

VIA FACSIMILE AND FIRST CLASS MAIL

Mr. Cesar Lee
Remedial Project Manager
United States Environmental Protection Agency
841 Chestnut Street
Philadelphia, Pennsylvania

**RE: Force Majeure Report/Request for Schedule Extension
Novak Sanitary Landfill Site
South Whitehall Township, Lehigh County, Pennsylvania**

Dear Mr. Lee:

This letter is written on behalf of the Novak RI/FS PRP Group ("Group") which are the Respondents to the Administrative Order by Consent ("Consent Order") in the matter of the Novak Sanitary Landfill Site ("NSL") in South Whitehall Township, Lehigh County, Pennsylvania. Pursuant to Section XVI of the Consent Order, you were notified by telephone on October 5, 1992 of circumstances the Group believes constitutes a force majeure event under the Consent Order. This verbal notice was provided within two business days after becoming aware of conditions constituting a force majeure event. This letter provides the follow-up written notice required by the Consent Order and specifically describes the nature of the delay. In addition, this letter provides the reasons the delay was unanticipated and beyond the reasonable control of the Group, the actions that have been and will be taken to mitigate the delay, the anticipated length of the delay, and the timetable/request for schedule extension.

The Force Majeure

The Group was informed by their contractor (Geraghty & Miller) on Thursday, October 1, 1992 that the U.S.EPA comments received on September 25 and September 28, 1992 required clarification by the U.S.EPA and a significant level of effort, including additional field work, to incorporate. Therefore, prior to revision of either the remedial investigation report ("RI") or the feasibility study report ("FS") a schedule modification would be necessary, because the 14 day response period set forth in Section VIII.G of the Consent Order for revision of the reports is insufficient. For example, the work required prior to revision of either report would include preparation of an addendum to the U.S.EPA approved RI/FS Work Plan ("Work Plan") and Field Operations Plan ("FOP"), followed by implementation of the associated field work upon receipt of approval from the U.S.EPA.

As required by Section VIII.G of the Consent Order, if the U.S.EPA disapproves of a revised preliminary or final Report the Group has 14 days from the receipt of the U.S.EPA's notice of disapproval to incorporate U.S.EPA's requested revisions and resubmit the report. The comments received from the U.S.EPA on September 25 and 28, 1992 are in excess of what the Group could reasonably have anticipated receiving from the U.S.EPA in the third round of comments. The most recent comments from the U.S.EPA include extensive comments to text which was previously submitted to the U.S.EPA

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(in response to the first round of the U.S.EPA's comments), and which the U.S.EPA did not previously comment upon. As such the Group is justified in considering such original language as approved and acceptable to the U.S.EPA.

It is the Group's opinion that the nature of the comments received from the U.S.EPA could not reasonably be anticipated in consideration of the responses received from previously revised documents, and could not have been within the contemplation of the parties in agreeing to the language provided in Section VIII.G of the Consent Order and paraphrased above.

The excessive number of comments to previously reviewed and apparently approved revisions, and the lack of an opportunity to confer with the specific individuals who provided the comments constitute additional basis for the force majeure and schedule extension.

Anticipated Delay

At the present time, it is not possible to quantify the anticipated delay caused by the event. The Group has attempted to arrange for a teleconference/meeting with the U.S.EPA to discuss the recently received comments; however, the U.S.EPA has informed the Group that the individuals which prepared a majority of the comments in question are not available until October 9, 1992 (the due date for the revised RI Report based on a 14 day response period). Thus, until the Group has the opportunity to discuss the comments in detail and resolve any outstanding issues, neither the RI nor the FS Reports can be revised. Therefore, the impact of this event cannot be predicted without further discussions with the U.S.EPA. However, Geraghty & Miller has informed the Group that to implement the activities requested in the recent comments from the U.S.EPA, an extension of approximately one year would need to be made to the schedule.

Steps Taken to Mitigate Schedule Impacts

The Group has undertaken several steps on parallel tracks in an effort to overcome the recent events and current situation.

On October 2, 1992, the U.S.EPA was contacted in order to arrange for a meeting or telephone conference to discuss the comments which had been received. A telephone conference was arranged for Monday, October 5, 1992 and subsequently canceled due to the unavailability of various individuals which had prepared the comments in question. This telephone conference was tentatively rescheduled for October 9, 1992.

The Group, in the interest of finalizing the RI and FS Reports, has authorized Geraghty & Miller to make those revisions which do not require further clarification from the U.S.EPA. These are primarily comments relating to further clarification of revisions made to the RI or FS reports in response to comments received from the U.S.EPA on May 26, 1992.

Finally, the Group has verbally presented alternatives to the U.S.EPA, for resolving those issues for which the Group is awaiting to discuss with the appropriate persons at the U.S.EPA.

Timetable/Request for Schedule Extension

The Group requests that the U.S.EPA approve an extension in the schedule for submittal of a revised Final RI and FS Reports. The extension is needed to allow for U.S.EPA to clarify various comments which were believed to have been resolved previously. The level of schedule extension necessary is

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dependent on further discussions with the U.S.EPA. If the U.S.EPA withdraws those comments which do not relate to clarification of comments provided in correspondence dated May 26, 1992, and considered previously acceptable, the necessary extension could be minimized (approximately two weeks). As stated above, incorporation of the U.S.EPA comments, without further clarification or revision, could require a schedule extension of one year or more.

Conclusion

It should be noted that the issues raised by the U.S.EPA in correspondence received September 25 and 28, 1992 were entirely unexpected considering the comments received on May 26, 1992 and subsequent discussion with the U.S.EPA. In addition, the comments received September 25 and 28, 1992 were received beyond the schedule provided for in Section VIII.G of the Consent Order. As provided for in the Consent Order, the U.S.EPA shall within 30 days of receipt of the revised report notify, in writing, the Respondents of U.S.EPA's approval or disapproval of the revised report. The comments were received well beyond the required 30 days after the U.S.EPA's receipt of the revised RI and FS reports.

In conclusion, it is the Group's opinion, based on review of the recent comments received from the U.S.EPA (to include the additional work items), that the U.S.EPA does not anticipate revision of the recommended alternative provided in the FS report, and is preparing the Proposed Remedial Action Plan (PRAP) for the NSL. In consideration of this fact, it seems inappropriate to delay issuance of the PRAP and the ultimate remedial action for one year or more. The Group has been extremely cooperative and undertaken activities which were clearly beyond the scope of the approved RI/FS Work Plan in the interest of moving this project forward. Any further study would not be in the interest of the public and apparently, based on communication with the U.S.EPA, would likely not impact the ultimate remedy for the NSL.

It is the Group's desire to meet with the U.S.EPA as soon as possible to discuss the issues outlined in this letter/force majeure and the recently received comments to the RI/FS reports. In the meantime, if you or any of your staff have any questions regarding any aspect of this project, please do not hesitate to contact me. I am confident, based on our discussions on October 8, 1992, that we will be able to resolve any outstanding issues and bring the RI/FS to an expeditious conclusion.

Sincerely,
de maximis, inc


Mark A. Travers
Senior Project Director

cc: Julie Parker, Esq., Hannoeh Weisman
Joseph Keller, Geraghty & Miller
Novak RI/FS PRP Group
Novak RI/FS PRP Group Technical Committee

cc: 10/19/92

R. Davis (3H215)
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M. Hefferon, DYNAMAC
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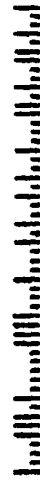
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